IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.465 OF 2006

Shri Babu Balu Sapkal
deceased by legal heirs
Mahadeo Babu Sapkal & Ors. ...Appellants

Versus

Shri Bandu Hari Sapkal
deceased by legal heirs
Shripati Bandu Sapkal & Ors. ...Respondents

Shri S.B.Deshmukh for Shri A.V.Anturkar for the Appellants.
Shri Vikas M. Mali for the Nos.1A to 1D, 2A-1 to 2A-2.

CORAM : ABHAY S.OKA, J.
DATED : JULY 12, 2007.

JUDGMENT:

1. Heard the learned Advocate appearing for the Appellants and the learned Advocate appearing for the Respondent No.1A to 1D. The rest of the Respondents are served with the notice of this Appeal. The Appellants are the original Defendants and Respondent No.1A to 1D are the legal representatives of the original Plaintiffs. The suit was for partition and separate possession which was dismissed by the trial Court. An Appeal was preferred by the Respondent No.1A to 1D. By a Judgment and Decree dated 20th November, 2001 the said Appeal was allowed and a decree for partition and separate possession has been passed.

2. It is an admitted position that when the Appeal was heard by the District Court, the Advocate appointed

by the Appellants was not present. According to the case made out by the Appellants, on 11th October, 2001 the Appeal was adjourned to 23rd October, 2001. According to the case of the Appellants, the date of hearing was changed to 06th November, 2001 without notice to them. Thereafter, the Appeal was adjourned till 19th November, 2001. According to the case of the Appellants as their Advocate was not aware that the Appeal was fixed on 06th November, 2001 and 19th November, 2001, the Appellants remained unrepresented.

3. In view of this position, on 28th April, 2006 this Court issued notice for final disposal by recording that the Appellants are praying for an order of remand.

4. The learned counsel appearing for the Respondent No.1A to 1D states that instead of keeping the Appeal pending in this Court, the Appellate Court may be directed to hear and decide the Appeal afresh within a time bound schedule. He submitted that the Plaintiffs are out of the possession of their share in the suit property and the original suit is of the year 1983. He, therefore, submitted that the Appeal may be directed to decided by fixing a time bound schedule.

5. Hence, I pass the following order:

(i) The impugned Judgment and Decree dated 20th November, 2001 is quashed and set aside and the Regular Civil Appeal No.198 of 1999 (Old Regular Civil Appeal No.43 of 1993) is restored to the file.

(ii) The Appellants and the Respondent No.1A to 1D are directed to appear before the learned Additional District Judge at Islampur on 27th August, 2007 for fixing the schedule of hearing.

(iii) The learned Additional District Judge will issue notice of the date fixed to the other Respondents in Regular Civil Appeal 198 of 1999.

(iv) The learned Additional District Judge will decide the Appeal as expeditiously as possible and in any event on or before 31st January, 2008. It is made clear that the Appellants will not be entitled to ask adjournment on any unreasonable ground.

(v) If any interim relief was operating during the pendency of the aforesaid Appeal, the said order of interim relief will continue to operate till the disposal of the Appeal.

(vi) All contentions of the parties on merits of the Appeal are expressly kept open.

(vii) Second Appeal is partly allowed in above terms with no orders as to costs.

(viii) Parties and concerned Court to act upon an authenticated copy of this order.

JUDGE